IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 3RD OCTOBER 2007 / 11TH ASWINA 1929

Crl.Rev.Pet.No. 3541 of 2007()

CRIME NO.257/07 OF NEDUMAKANDOM POLICE STATION

REVN. PETITIONER: ACCUSED

NIZAR @ PONNU,
S/O. HASSAN, UKKINIVEETTIL,
EDAVETTY BHAGOM, THODUPUZHA.

BY ADV. SRI.S.RAJEEV

RESPONDENTS: COMPLAINANT

STATE OF KERALA
REP. BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA
ERNAKULAM (CRIME NO. 257 OF 2007
OF NEDUMAKANDOM POLICE STATION)

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 03/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 3541 OF 2007

Dated this the 3rd day of October, 2007

O R D E R

The revision petitioner, who is the accused in Crime No.257/07 of Nedumkandom Police Station for offences punishable under sections 408, 420 and 381 IPC, was granted bail by the JFCM, Nedumkandom on 21.8.07 at a time when pursuant to Annexure-II report dated 14.8.07 the offence punishable under section 381 IPC stood deleted. One of the bail condition was that he should report before the investigating officer on all Sundays. Subsequently, the Assistant Sub Inspector of Police, Nedumkandom filed Annexure-IV report before the Magistrate alleging that the petitioner committed default in reporting before the investigation officer on 16.9.07 and 23.9.07 and praying for cancellation of the bail granted to the revision petitioner. On the same day, i.e., on 24.9.07 itself, the court below cancelled the bail alleging that the accused has violated the condition of bail and issued an NBW to the revision petitioner and notice to the sureties.

2. Heard both sides.

3. Even assuming that the revision petitioner violated the bail condition regarding reporting before the police on two of the dates mentioned in Annexure-IV report, the Magistrate should have heard the

revision petitioner/accused before cancelling the bail with a view to ascertain whether the bail condition has been violated or not and also giving the revision petitioner an opportunity to explain the default, if any, committed by him, particularly when as per Annexure-III application dated 12.9.07 he had prayed for deleting the above condition in the bail order on the ground that he had to undergo an operation for his eyes and the doctor had advised three months' rest thereafter. He had also produced a certificate issued by Vasan Eye Care Hospital, Kochi.

4. After hearing both sides, I am of the view that the order dated 24.9.07 passed by the court below in D.No.5003/07 cancelling the bail granted to the revision petitioner for the alleged non-compliance of bail condition cannot be sustained as revision petitioner was not heard before doing so and it is accordingly set aside. The revision petitioner will continue to be on bail as per the earlier order dated 21.8.07 granting him bail. It is, however, made clear that this order will not preclude the Assistant Public Prosecutor concerned to move the court for cancellation of the bail in case the petitioner is or has misused the liberty granted to him.

This revision is disposed of as above.

(V. RAMKUMAR, JUDGE)

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